TRANSCRIPT

INTEGRITY AND OVERSIGHT COMMITTEE

Performance of the Victorian Integrity Agencies 2022/23

Melbourne – Monday 25 November 2024

MEMBERS

Dr Tim Read – Chair Paul Mercurio
Hon Kim Wells – Deputy Chair Rachel Payne
Ryan Batchelor Dylan Wight
Jade Benham Belinda Wilson

WITNESSES

Eamonn Moran PSM KC, Inspector,

Cathy Cato, Chief Executive Officer and General Counsel, and

Alison Lister, Director, Integrity Operations and Policy, Victorian Inspectorate.

The CHAIR: We are reopening our public hearings into the Performance of the Victorian Integrity Agencies, and from the Victorian Inspectorate I welcome Eamonn Moran, the Inspector; Cathy Cato, Chief Executive and General Counsel; and Alison Lister, General Manager, Integrity Operations and Policy.

I will just quickly introduce the Integrity and Oversight Committee again. We have Rachel Payne at one end, Jade Benham, Deputy Chair Kim Wells, me – Tim Read – Ryan Batchelor, Belinda Wilson, Dylan Wight and Paul Mercurio.

Thank you again for coming in. Do you have any brief introductory remarks?

Eamonn MORAN: I do indeed, Chair. Thank you.

The CHAIR: Thanks, Inspector.

Eamonn MORAN: Thank you, Chair. My colleagues Cathy Cato and Alison Lister and I welcome the opportunity to meet with the Committee and address the questions that you have for the VI. Thank you too for the opportunity to make a short opening statement. I thought I will confine my opening statement to making some general observations and, with your indulgence, given that it is my last appearance at one of these performance hearings, to run briefly across 2023/24 as well as 2022/23.

For a small agency with fewer than 30 FTE [full-time equivalent] and oversight responsibilities of different kinds in relation to 14 other entities, I believe we punch well above our weight. Over the two-year period 2022/23 and 2023/24, we received 238 complaints, many involving complex and sensitive issues, from individuals who feel that they have reached the end of the line and see us as their last resort. From the complaints we received, we addressed 751 allegations and closed a total of 278 complaints, so 40 more than we received over that period. Therefore, I think it really helped us address the backlog that we built up starting from when the COVID restrictions were in place and also from a time when we really had an inadequate FTE to deal with the load that we had.

We have carried a heavy investigations load, with as many as nine in 2022/23, and we tabled three special reports in Parliament. An additional 11 reports were tabled in Parliament, arising out of our inspections of agency use of covert, intrusive and extraordinary investigative powers, and a further three such reports were submitted to ministers. We received 1157 notifications from agencies of their use of coercive powers, a requirement on them that is critical to our oversight work.

A high percentage of recommendations we made to agencies were accepted – 91 per cent in 2022/23 and 88 per cent in 2023/24. In 2022–23 Callida Consulting's independent performance audit report on the VI was tabled in Parliament, recognising the substantial improvements to operation and management arrangements that had been made over a four-year period, but an inadequate legislative framework hampered Callida's work, preventing us sharing operational material with the auditor because of the secrecy provisions we operate within. I hope that this framework will be rectified before the next audit is due in 2025/26.

In 2022, this committee tabled a report on its inquiry into integrity agencies' performance in 2021–22, which focuses on witness welfare. This report led to the VI considerably revamping its witness welfare framework, including the governance arrangements applicable to it. Our annual report for 2023–24 lists the actions we have taken in response to both the performance auditor's report and this committee's 2022 report on witness welfare. I like to think that a hallmark of VI is its attentiveness to implementing recommendations made to it, whether by this committee, a performance auditor or our own internal auditors.

The work the VI has to do is not easy. Over my seven years we have experienced significant challenges to aspects of our work. Our October 2022 special report *IBAC's Referral and Oversight of Emma's Complaints about Victoria Police's Response to Family Violence by a Police Officer* bears testimony to significant

resistance by IBAC [Independent Broad-based Anti-corruption Commission], led by the then IBAC Commissioner, while our March 2024 special report *A Compliance Case Study on the Use and Oversight of Coercive Powers* bears testimony to significant resistance by the then Victorian Ombudsman. Happily, this is not our typical experience now in dealing with IBAC and the Victorian Ombudsman under their current leadership.

Despite the distractions and challenges along the way, we have never lost sight of the end game for us, which is to help deliver for the Victorian community improvements to the integrity system, working towards our vision of an integrity system that is robust and trusted.

Finally, and excitingly, our long quest for a name that actually explains what we do is over. Parliament has now passed legislation to rename the VI [Victorian Inspectorate] as Integrity Oversight Victoria, so the days of complainants confusing us with other inspectorates and of us being asked, 'What is it actually that you inspect?' will soon be over. Thank you for the opportunity to make this opening statement.

The CHAIR: Thank you, Inspector. Why don't we just go straight to Rachel Payne for our first question.

Rachel PAYNE: Thank you. Thank you for presenting before us today. On the name change, how is the Victorian Inspectorate raising community awareness of the agency's role in the integrity system, given that the name has changed to Integrity Oversight Victoria?

Eamonn MORAN: I am very happy to say we have done extensive work on this in terms of looking at our branding and logo. Cathy, I think, is full bottle on this, so perhaps she could answer.

Rachel PAYNE: Okay. Cathy, please.

Cathy CATO: Sure. We are yet to have confirmation of the new date for our name to change, so the work we have done so far is internal work. We have undertaken considerable work on a new brand and logo. It is very important that the complainants across the various agencies that we oversight know where to come, so we have done work on that. There are five of those bodies, and there will be another, the Parliamentary Workplace Standards and Integrity Commission, from 31 December. One of the important things we are doing is not using IOV as an acronym, because it is really important that we use the full name, Integrity Oversight Victoria, to help make sure that people know, as Eamonn said, the work that we will be doing.

The CHAIR: Great. Shall we go to Jade Benham.

Jade BENHAM: That leads perfectly into my question. I was going to ask how the IOV might mitigate any confusion with the IOC, but that is one of them. Particularly around matters that are obviously confidential to each of us, how are you going to lower the risk of confusion, particularly from complainants, I suppose, or people wondering where they should go?

Eamonn MORAN: I think particularly we are going to use the full name, Integrity Oversight Victoria, and our domain name is going to be integrityoversight.vic.gov.au. I can understand somebody typing in 'IOC' accidentally, but it will not work. They have to put in 'integrity oversight', which helps convey the picture of what it is that we do, that we are a body that oversights in the integrity space, and the Victoria aspect is covered by the vic.gov.au.

Jade BENHAM: Isn't that slightly more confusing if your website is 'integrity oversight' and we are the Integrity and Oversight Committee?

Eamonn MORAN: Because we will be promoting fully this name, I am pretty hopeful that it will be fine. If anything gets misdirected – well, it cannot really because you are not vic.gov.au, are you? I am not sure. You have got 'parliament' at the end.

Jade BENHAM: We are parliament.vic.gov.au.

Eamonn MORAN: I think that is what will stop it happening.

Jade BENHAM: Okay.

The CHAIR: Great. Kim Wells.

Kim WELLS: Thanks. The VI's annual report noted the adverse impacts of criticism of the VI by an agency it oversights. This was not in the public domain but reported in the media. Could you elaborate on the context and impacts of criticism aired in this way and how to reduce these occurrences?

Eamonn MORAN: Yes. We are a body that very carefully manage the data we have and the information that we have, and so generally the only time we ever speak publicly is through special reports tabled in the Parliament and through our annual reports tabled in the Parliament. So, you do read things in the paper where a criticism can be levelled, and it is very difficult for us because I feel that we cannot directly answer it because we do not want to give out any information and say, 'That's incorrect and this is the correct position.' It is a very rare thing, and it has not occurred for some time now. I think it is a matter of ensuring that the relationships are such between the bodies that we oversight where you are working constructively together. It should put an end to that sort of matter.

Kim WELLS: Okay, thanks.

The CHAIR: Thank you. Ryan Batchelor.

Ryan BATCHELOR: Thank you. Inspector, thanks so much for the work that you have done in recent years. I just wanted to go to the special report you tabled into IBAC's handling of Emma's case. Obviously, it was a significant issue. The report makes bare some pretty, I would say, concerning aspects of IBAC's handling of some fairly significant family and domestic violence issues. You mentioned in your opening statement some resistance from IBAC to that work. I am just wondering if you have any reflections on that and updates for the Committee on your view about how IBAC, in particular, but the integrity agencies overall, deal with family and domestic violence cases.

Eamonn MORAN: Yes. The matter that we reported on there was a particularly distressing matter. We felt, as you will have seen in the report, on the referral decision under section 73 of the *IBAC Act* [2011 (Vic)], that we could not see that there had been any analytical process applied to the decision to refer.

Ryan BATCHELOR: This is to refer it back to Victoria Police?

Eamonn MORAN: To refer it back to Victoria Police. Under that section, it not only has to be relevant to the function of the body that you are referring to, but it has to be more appropriate for that body to deal with it than for IBAC itself to deal with it. And, given the issues that had been raised and the fact that in Emma's case her partner was a Victoria Police officer, you could immediately see the potential for issues of conflict of interest. We felt it was important to put that on the record, because what we wanted to try and ensure was that people who were victims of family violence felt safe in going to integrity bodies to make a complaint and felt safe that their complaint would be handled in a sensitive way and a way that would actually help them. So, we tabled our report, and we were very pleased that in November 2023 the then CEO of IBAC accepted the, I think, four recommendations that we made and wrote to us and told us about the changes to process that IBAC were making. So that is something that we have been continuing to follow up with IBAC. They have now got policies in place, so we feel that now there are policies in place that if followed should prevent this occurring again, because we do want victims like Emma to feel safe to come forward and make a complaint to IBAC.

Ryan BATCHELOR: And how would those new policies improve the situation that had occurred previously when complaints such as these that you reported on were handled – obviously that referral back? What do you think will have changed?

Eamonn MORAN: Do you want to talk about the checklist?

Cathy CATO: Yes. There were four recommendations that we made, and with respect to three of those they related to the handling of that type of complaint by IBAC. The first thing that they have put into place is a very detailed referral procedure, so they have now a referral checklist. Before they refer anything under section 73, they are considering: Is it more appropriate? And they are considering risk: What would be the risk if we did refer it back? So, there are a number of considerations that they are looking at first.

Ryan BATCHELOR: And, so, is that in all cases or just in cases of family and domestic violence?

Cathy CATO: No, it is actually in all cases. They have particular examples for family violence, so that is a particular risk that they would look at. But we have tried to make it broad enough to cover other risks as well. If something has been referred, then there is guidance in there that if a complaint comes back to IBAC they should escalate the concern up the management path so that when the junior officer receives that extra complaint saying, 'Look, something has gone to Victoria Police. It's not being handled properly. I feel like there's a conflict,' or something like that or, 'I think I'm at risk', rather than it being considered in an isolated way it is escalated and so thought through in the context of the recommendations that we have made. And then they have got further guidance as well about the original assessment about whether to refer things or not. So that is just at a very high level; they are some of the things that they have in place. And they also have guidance around the possibility of withdrawing a referral. Section 79 of the *IBAC Act* allows them, once they have referred a matter – say if there is an issue raised or they have asked a question of Victoria Police – to then say to them, 'Okay, we'd like to look at your matter,' and then they can say, 'Look, it's time for us to now investigate this instead.' There is a whole checklist of things that might indicate when that is appropriate. So that all goes to the welfare, health and safety and issues like that.

Ryan BATCHELOR: One of the things that was highlighted in the report was that on one level what looks like a minor administrative matter about where letters get sent actually can be a very significant safety issue for people. The new procedures – obviously they are operating at a risk-assessment level about referrals – are they safety-informed, in your opinion, the whole way through the process chain as to how these sorts of matters would be dealt with at a sort of administrative level rather than at a policy level?

Cathy CATO: Yes. Well, it is quite detailed. Because there is a checklist, it is a fairly administrative process. There is a template there in front of the person for them to do. Whether it actually addresses that particular identified risk – I would have to take that on notice. I do not recall that it does, but that is not to say that they have not been trained. They may have trained using that as an example. I think it is best to take that on notice.

Ryan BATCHELOR: Yes. It might be useful. I am just particularly conscious of how what seem like little things can turn out to be quite significant.

Cathy CATO: Yes. Absolutely.

The CHAIR: Thank you. Let us go to Belinda Wilson.

Belinda WILSON: Thank you. Thanks for meeting with us again, and thank you for all the work that you have done. You will be missed. I want to ask about the counselling and debriefing support that is provided to the frontline VI complaint and handling investigation staff. How effective has it been so far and what is on offer?

Eamonn MORAN: I think probably Alison. I should really correct that Alison's title is now Director, Integrity Operations and Policy from General Manager. But it is very much her area, handling complaints.

Belinda WILSON: Thank you. Thanks, Alison.

Alison LISTER: No problem. Certainly in terms of the psychological support for frontline staff, in the year 2022/23 we introduced new counselling and debrief support for frontline staff handling complaints and investigations. This was available in addition to the employee wellbeing service that we have. We have a separate mental health service provider, who attends our office monthly to conduct workshops and debrief with our complaints team. Workshops are really tailored to the issues that the team is experiencing at the time for advice and assistance. In the past, some examples of what sessions have focused on are how best to communicate with victims of family violence and also strategies that staff can use when faced with a complainant demonstrating challenging behaviours – things like anger or intimidation, threats of violence, agitation and anxiety – so really how to be able to manage that conversation so that we can get to the complaint. The sessions really focus on things like recognising the warning signs, how to apply the psychological first-aid framework to respond and to support people in distress, identifying strategies to look after staff's own wellbeing and really acknowledging past traumatic events without retraumatising a complainant.

Some of the benefit – so how it has been helpful – is really that the team benefits from that regular opportunity to debrief about the challenges faced when working with a range of complex and challenging complainants that

we have come to us at the VI. Also, with the complex and challenging complaints and issues that people have been through, their circumstances are often complex and challenging. It has really assisted the team's resilience and wellbeing, and I guess also it helps the team members recognise that the challenges are a shared experience and the importance of looking after themselves and each other. So that has been really beneficial. In some ways when we are presented with a really unique situation and we are having trouble sort of, I guess, delivering a message to a complainant, our mental health service provider also assists our team to tailor letters and calls in terms of where best to pitch the information and how to manage particular behaviours that might be really challenging for people.

I think, too, we have recently had some plans to in the future extend on that training so it is not just confined to the complaints team. Certainly Eamonn mentioned before that we have done a lot of work on our witness welfare guidelines for staff, and that goes right across the office, but more training on trauma-informed approaches right across the VI – so in our complaints space what a trauma-informed approach looks like but also in our investigations what that looks like specific to our investigations – and then helping our staff who might be reviewing examinations of witnesses where the examination is conducted by another agency and how to recognise anything that might be a red flag. So, it has been really beneficial.

Belinda WILSON: Fabulous. Thank you.

The CHAIR: Thank you. Let us move to Dylan Wight now.

Dylan WIGHT: Thank you, Chair. How has IBAC responded to the Inspectorate's recommendations to IBAC for enhancements to its procedure and practice related to the execution of search warrants?

Eamonn MORAN: In general terms, they have now got a new policy in place. Our interest in this area arose out of some complaints that we had received which dealt with the fact that when a search warrant was being executed, it was alleged that something occurred during this course, some conversation was had, but there was no record of it, and we were very keen that there was a record made of these things. So, they have in place now a policy which will mean that they would look in advance at the nature of the warrant they are executing, whether they need to record everything or whether they can record the key bits. If something important is not recorded, then it is my understanding what will happen is that there will be a record made so the person can confirm that this occurred when the recording was not happening. I think in general terms that is what it does.

Dylan WIGHT: So, it means their response has essentially been to create a new policy.

Eamonn MORAN: A new policy, yes, and to really concentrate in the area and think, 'What is it that we need to make sure that we've got a proper record of the execution of this warrant?'

Dylan WIGHT: So previously a warrant could be executed without really any record of it internally or externally? From an IBAC point of view there are going to be records in different places.

Eamonn MORAN: There would be some record, but I think in a particular case it was suggested a conversation occurred in another part of the premises which was not recorded.

Dylan WIGHT: Okay, understood. Thank you.

The CHAIR: Paul Mercurio.

Paul MERCURIO: Thank you so much for the wonderful work you have done for the past seven years. I have only been here two years, but we are grateful. Can you talk a little bit about what the VI has done or is doing to improve the secure and anonymous receipt and handling of complaints? Also, you had plans to introduce in 2023/24 a communication portal for anonymous complaints. Has that gone ahead?

Eamonn MORAN: Yes. That is something that I think is a really exciting development. Again, Alison is probably best to talk about it.

Alison LISTER: Yes, sure. In June 2024/23 we did introduce a new online complaint platform that allows us to communicate with anonymous complainants. The situation was previously that somebody could still send us an anonymous complaint, but we had no way of going back to them to get clarity around something that they had said, to request more information and things like that. Now what we have is a platform that is two-way

encrypted, so people can remain anonymous but we can actually ask them questions — so we can communicate with them and even give them the outcome of their complaint, which is much better. It is a completely secure means for complaints to be made to us anonymously. It really does provide us that capacity to correspond and seek that further information. I have already covered the fact that we can provide them with the outcome. It is really a significant improvement for us, and we are certainly seeing that complainants are taking up that opportunity and they are speaking with our staff through the function. It has been really useful, and, I think, you know, as people become more aware of it, it will probably be taken up more and more.

Paul MERCURIO: They feel safe and secure obviously. Great. Good work.

Eamonn MORAN: I think we just need to put a lot of effort into promoting it to make sure people are aware of it, because it was so frustrating in the past when you received an anonymous complaint and you could see there could possibly be something good there, but you needed more information and you could not go back. This enables you to go back, but their anonymity is still protected.

Paul MERCURIO: Yes. How do you convince them that that is the case? Because if you got a reply from an anonymous complaint, I think you would freak out.

Alison LISTER: Yes. There is certainly quite a bit of information available on our website but also through the platform provider itself that talks about the two-way encryption. I think the key that people need to use to log in – so, you know, they are not punching in their email address at home or their mobile number. So, I think there is a lot of information available. They are also able to give us a call and talk about it if they have concerns, or of course if they are really not trusting of the platform or not able to use it, they can still call us and lodge their complaint over the phone.

Paul MERCURIO: Okay. Thank you.

The CHAIR: All right. Thank you very much. I might just ask about a reference in the annual report where you noted that our legislation does not address whether a witness should be told before interview whether they are the subject of an investigation. I was wondering if you could expand on that issue, particularly how you have engaged with other integrity agencies and whether any law reform is required.

Eamonn MORAN: Thank you, Chair. Cathy, I wonder if you could deal with this?

Cathy CATO: Certainly, Chair. Yes. What we have explained I guess in our annual report is that there is not any particular law around this – making it clear that you need to tell someone whether or not they are the subject of the investigation before they appear as a witness. However, we do refer them to the *Occupational Health and Safety Act* [2004 (Vic)], so they do need to consider what impact it is going to have, when we are interviewing someone, on them.

What we have engaged with IBAC about – and they have introduced a slight change to their procedure, for example, whereby they do a case-by-case basis, and they have to do an analysis of whether or not it is going to be better for the person's welfare to be told that they may be a subject or are a subject of the investigation versus whether that would just be even more stressful for them, especially if it is a sort of borderline case. So, we engaged quite a bit with IBAC about a particular recommendation that arose out of that investigation in order for them to work out an approach that they thought was appropriate, because it is ultimately their liability that they have to think about when they are thinking about compliance with the OH&S Act and making their decisions in each case.

Whether there is law reform required around it – I am not sure that there is. I think we think as a matter of best practice you certainly should be erring on the side of consider[ing] telling a person. It enables them to then be able to think about whether or not to have legal representation before they appear as a witness, whether or not they might want to have a support person with them when they appear as a witness. It is a pretty frightening thing to come to any integrity body as a witness, and they have an entitlement under the legislation already to know about the nature of matters that they will be questioned about. That should give them some clues, but sometimes the exception applies, and there might be more prejudice to the investigation for doing that, so they are not informed. So, I think where we have landed with IBAC is probably appropriate for now, but it is something we will keep an eye on in that regard. Did you want to –

Eamonn MORAN: No, I think that covers it.

The CHAIR: I am not sufficiently familiar with the *Occupational Health and Safety Act* in this context, but you were referring to that Act from the point of view of the welfare or wellbeing of the witness. Is that Act sufficient for that consideration?

Cathy CATO: Well, it has broad application in that you need to take all steps that are reasonably practicable, so you are always then needing to weigh up what is our role as an organisation. First and foremost, they are a corruption-prevention organisation, and the legislation gives them all these powers to enable them to do their work, so they have to think about that, on the one side, and then think, 'Well, what would it be reasonably practicable for us to do to help protect the health and safety of the individual?' It is a very useful principle, and I think it does apply quite well in this particular circumstance.

The CHAIR: Thank you. Do any Committee members want to ask anything further?

Kim WELLS: I have got just one.

The CHAIR: Mr Wells.

Kim WELLS: Does the VI have complete oversight of the police complaints handling system?

Eamonn MORAN: Not the VI, no. We have got oversight of IBAC, and then of course they look at how the police are dealing with complaints.

Kim WELLS: Sure. My question, then, is if IBAC have complete oversight, what audit do you do of IBAC investigating a sample of the police complaints to make sure that their category is correct? What role does VI play in regard to those police complaints?

Eamonn MORAN: Some years ago we did a monitoring project, for example, where we went to IBAC and said, 'We want a random selection of 100 files that are dealing with police complaints,' and we looked at those to see what conclusions we could draw about how they were handling those matters. We do have the power to do that, to go and require information from IBAC, and that would be our only way of doing it. I mean, I cannot remember how many police complaints there are, but it would be a big job to look at them all. But I think an appropriate process is to take a sample.

Kim WELLS: That is fine obviously to not look at all of them but to do an audit. How long ago was it since you have done that?

Eamonn MORAN: That was 2019, I think. It was a fair while ago.

Kim WELLS: So are you planning –

Eamonn MORAN: We have been talking about it. Obviously, we have to engage with IBAC in what processes we do, but we feel that in whatever area, whether it is police complaints or other aspects of their work, it is good for us to have a conversation about some work that we can do, so that we get better oversight of areas that do not arise through our normal work.

Cathy CATO: I was just going to add that the Emma report is another example of looking at that, where there are now in place, as we described earlier, considerations for whether or not it is more appropriate for things to be referred to Victoria Police for investigation rather than possibly being done by IBAC. They have now got much more of a framework for looking at that rather than considering just referring things more often than not.

Kim WELLS: Just finally, could you report back, maybe next time VI is before the Committee, on when you are anticipating some time in the future another audit in regard to the police complaints handling by IBAC?

Eamonn MORAN: We certainly have talked about doing another monitoring project, which is what we called it originally. We would have to devise that project and consult with IBAC on what exactly it is and what we do, but we are very conscious that it is an area – I mean, a lot of the complaints that we get about IBAC relate to police matters, so it is a big area of their operation.

Kim WELLS: Thanks.

The CHAIR: Great. Any further questions?

Ryan BATCHELOR: You are getting some new functions and powers with respect to the management of human sources by Victoria Police but also the Parliamentary Workplace Standards and Integrity Commission. Just briefly, how do you go about setting up your operation to deal with new oversight responsibilities?

Eamonn MORAN: Well, we had to do that a few years ago when the OSI [Office of the Special Investigator was set up, and what we did, and we have been doing it with respect to the department here involved in setting up the parliamentary workplace standards commission, is talking about our ideas about what it is you need to operate as an investigative body – what types of systems you need, what sort of information we will be looking to get from you, and just to put front of mind some considerations that they need to have. Obviously that body has not been established as yet. It will be at the end of the year. As I said, we have had meetings with the people who are involved in the implementation. We have tried to give them as much assistance as we can. Certainly Cathy was involved last week in a meeting, because we want to help because we feel that to have that body properly set up and acting properly, it is going to be in the long run of benefit to us that hopefully fewer people come knocking on our door then saying they have had a rough treatment.

Ryan BATCHELOR: Thanks very much.

The CHAIR: Good. All right. I think at this stage we can finish this section of the hearings and thank Cathy Cato, Eamonn Moran and Alison Lister very much for appearing and answering our questions, and a particular thank you and acknowledgement to Eamonn Moran for your contribution to public service over the years.

Eamonn MORAN: Thank you very much. Thank you, Chair.

The CHAIR: We will suspend the hearing for a short break.

Witnesses withdrew.